



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 860 of 1997

RANCIS ELIJAH MWANGI WAHOME.....PLAINTIFF

VERSUS

BUNSON TRAVEL SERVICES LTD.....DEFENDANT

RULING

This application by the first defendant expressed to be brought under Order XVI Rule 5(a) and (d) seeks orders that the suit as against the first defendant be dismissed for want of prosecution. The applicant also prays for costs of this application.

The application is based on the grounds that:

- (1) The plaintiff has failed or neglected, and/or refused to take any steps to set down this matter for hearing since the filing of amended plaint on 26<sup>th</sup> October 2000. The last of the defences was delivered on 19<sup>th</sup> April 2002 and the pleadings were closed on 26<sup>th</sup> April 2002.
- (2) There has been inordinate delay by the plaintiff in fixing this matter for hearing which delay is likely to occasion the first defendant great inconvenience and prejudice.
- (3) Due to the plaintiff's inordinate delay aforesaid, the First Defendant is unlikely to trace all its relevant witnesses and/or documents for the fair hearing of this matter.

The plaintiff was served but did not file any papers to oppose the application.

Order XVI Rule 5(a) provides:-

***“XVI (a)” If within 3 months after the close of pleadings the plaintiff does not set down the suit for hearing, the defendant may either set down the suit for hearing or apply for its dismissal”***

It is now 4 years and 3 months since the pleadings closed and the first Defendant has elected to apply for dismissal. The application is not opposed. Allowed in terms of prayers 1 and 2 of the Notice of Motion dated 8<sup>th</sup> July 2005. The plaintiff's suit as against the first defendant is dismissed with costs as well as costs of

this application.

Dated at Nairobi this 2<sup>nd</sup> day of February, 2006.

**J.L.A. OSIEMO**

**JUDGE**